

ISSUE

The issue is whether appellant has met his burden of proof to establish total disability for the periods December 19, 2014 to February 21, 2015, August 23, 2015 to January 13, 2016, and February 27, 2016 to February 10, 2017 causally related to his accepted July 22, 2013 employment injury.

FACTUAL HISTORY

On July 22, 2013 appellant, then a part-time rural carrier associate filed a traumatic injury claim (Form CA-1) alleging that he injured his right forearm when lifting flats of mail while at work that day. He stopped work on the date of injury. The employing establishment noted that appellant had previously injured his right arm prior to working at the employing establishment when his arm was crushed in a printing press and his middle, ring, and little fingers were totally amputated, and his index finger partially amputated. On August 14, 2013 OWCP accepted the claim for sprain of elbow and forearm, right.

On December 17, 2014 appellant filed a notice of recurrence (Form CA-2a) indicating that, on December 11, 2014, his right arm and fingers hurt daily due to constant use. He stopped work on December 12, 2014. The employing establishment indicated that, following the employment injury, appellant worked restricted duty until he was released to full duty without restrictions on September 3, 2014.

In a work status note dated December 15, 2014, Dr. Christopher J. Lincoski, an attending orthopedic surgeon, provided restrictions that appellant could perform no heavy lifting, pushing, or pulling greater than five pounds and no grasping for more than three hours.

In December 2015 OWCP referred appellant to Dr. Victoria M. Langa, a Board-certified orthopedic surgeon, for a second opinion evaluation. By report dated January 14, 2016, Dr. Langa noted a history that in 2000 or 2001 appellant had a very significant injury when his right hand was caught in a printing press and he lost the middle, ring, and small finger in their entirety, and the index digit just distal to the proximal interphalangeal (PIP) joint. The thumb was spared. Dr. Langa indicated that appellant had a very prolonged postoperative course and apparently returned to gainful employment in 2005. She reported that a July 22, 2013 employment injury was accepted for sprain of the right elbow/forearm. Dr. Langa noted that appellant reported that, following his release to regular job duties in September 2014, he was almost immediately having problems due to weakness of grip. She explained that appellant did not have a true grip due to his missing fingers so that his complaint of weakness of grip was actually referring to pinch strength between his thumb and the remaining index finger digit. Dr. Langa continued that he reported that Dr. Lincoski placed him on permanent restrictions which the employing establishment was unable to accommodate, and that he was taken off work on December 18, 2014. She noted that appellant also complained of a persistent muscle herniation through a fascial defect in his distal volar forearm with some occasional associated discomfort in that area. Following physical examination Dr. Langa diagnosed fascial defect of the right forearm with muscular herniation sustained on July 22, 2013. She concluded that appellant had long since reached maximum medical improvement, and his right forearm condition was medically stable.

Dr. Lincoski provided a January 23, 2017 duty status report (Form CA-17) in which he diagnosed right elbow tendinitis and fascial herniation due to the employment injury. He provided

permanent restrictions of three to four hours of simple grasping per day and a five-pound weight restriction.

On January 26, 2017 OWCP expanded acceptance of the claim to include right forearm fascial herniation.

On February 10, 2017 appellant accepted a limited-duty assignment delivering Express and Priority Mail and verifying undeliverable bulk business mail for 2.5 hours daily, 6 days a week. Simple grasping was limited to .75 hours. He returned to this position on February 11, 2017 and received compensation on the supplemental rolls based on his wage-earning capacity.

Appellant filed three claims for compensation (Form CA-7) on May 24, 2017 for the periods December 19, 2014 to February 21, 2015, August 23, 2015 to January 13, 2016, and February 27, 2016 to February 10, 2017. The employing establishment verified that he was on leave-without-pay (LWOP) for the periods claimed.

By development letter dated September 19, 2017, OWCP informed appellant of the medical evidence needed to establish disability. It noted that Dr. Lincoski's December 14, 2014 report provided no diagnosis or medical rationale regarding appellant's continued absence from work. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant thereafter submitted a February 17, 2014 treatment note in which Dr. Lincoski diagnosed right fascial herniation, resolved biceps tendinitis, and status post finger amputation. He advised that the fascial herniation and biceps tendinitis had healed, noting that appellant mostly had overuse given that he had limited function in his ability to use his right hand due to a prior injury. Dr. Lincoski recommended four hours of restricted duty daily, indicating that restrictions were permanent, and that appellant's symptoms were due to overuse from the prior injury. In a December 15, 2014 treatment note, he noted that appellant presented with a new problem, pain over the lateral aspect of the right elbow. Right elbow examination demonstrated tenderness over the right lateral epicondyle with positive Cozen and Mills tests. There was very mild tenderness over the right biceps, and the fascial herniation was not tender to palpation. Dr. Lincoski diagnosed asymptomatic right fascial herniation, resolved biceps tendinitis, and symptomatic right lateral epicondylitis. He recommended medication, permanent work restrictions, and a short course of physical therapy with home exercise.

In a January 23, 2017 report, Dr. Lincoski noted seeing appellant for follow-up.⁴ He reported that appellant's fascial herniation was unchanged, and that there was no tenderness over the medial or lateral condyle of the right elbow. Dr. Lincoski diagnosed right fascial herniation, and provided permanent restrictions of no heavy pushing, pulling, or lifting greater than five pounds, and no grasping for more than three to four hours.⁵

By decision dated November 16, 2017, OWCP denied appellant's claims for disability compensation for the periods December 19, 2014 to February 21, 2015, August 23, 2015 to January 13, 2016, and February 27, 2016 to February 10, 2017. It found Dr. Lincoski's reports

⁴ The record does not indicate that appellant saw Dr. Lincoski between December 15, 2014 and January 23, 2017.

⁵ Appellant also submitted additional treatment notes from Dr. Lincoski that are not relevant to the periods of disability claimed in this appeal.

were of insufficient rationale to establish disability for work due to the accepted July 22, 2013 employment injury. On November 27, 2017 appellant, through counsel, requested a hearing before an OWCP hearing representative.

In November 2017 OWCP referred appellant to Dr. Langa for subsequent second opinion evaluation. Dr. Langa was asked to provide an opinion regarding whether appellant continued to suffer residuals of the accepted conditions and his work capabilities.

By report dated December 13, 2017, Dr. Langa noted that she had previously examined appellant in January 2016. She diagnosed fascial defect of the right forearm with muscular herniation. Dr. Langa advised that the fascial herniation was permanent in nature, but was not disabling and that the accepted July 22, 2013 employment injury did not aggravate the preexisting devastating injury to his right hand. She opined that appellant should be able to perform full work duties as a rural carrier, and that he required no further treatment for the forearm fascial defect.

During the hearing, held on April 12, 2018, counsel maintained that, because appellant's light-duty position was withdrawn in December 2014, he was entitled to wage-loss compensation. Appellant testified that he was placed on full duty in the Fall of 2014, and that in December 2014 full duty required too much grabbing which caused right arm pain and loss of grip ability. He maintained that he reported this to the postmaster who sent him home because no light-duty work was available, and that he did not return to work until February 14, 2017 when he began a part-time light-duty position. Appellant testified that he had resigned from the employing establishment on February 5, 2018 and began work at a chemical plant where he performed no physical labor, just monitored machines. The hearing representative advised appellant that to support disability he should submit medical or factual evidence that substantiated that there had been a withdrawal of light-duty work or that the disability stemmed from the July 2013 employment injury. The record was held open for 30 days. Nothing further was submitted.

By decision dated May 22, 2018, an OWCP hearing representative affirmed the November 16, 2017 decision. He found Dr. Lincoski's reports insufficient to establish entitlement to wage-loss compensation for the three intermittent periods claimed between December 19, 2014 and February 10, 2017 because he did not explain how any need for work restrictions stemmed from the July 22, 2013 employment-related lifting injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.⁷ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.⁸ Whether a particular injury causes an employee to

⁶ *Supra* note 2.

⁷ See *D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

⁸ *Id.*

become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.⁹

Under FECA the term “disability” means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.¹⁰ Furthermore, whether a particular injury causes an employee to be disabled from employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.¹¹

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹² Rationalized medical evidence is medical evidence which includes a physician’s detailed medical opinion on the issue of whether there is causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹³ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁴

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.¹⁵

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish total disability for the periods December 19, 2014 to February 21, 2015, August 23, 2015 to January 13, 2016,

⁹ See 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

¹⁰ *Id.*

¹¹ *T.O.*, Docket No. 17-1177 (issued November 2, 2018); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹² *D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹³ *C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹⁴ *D.W.*, *supra* note 12; *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁵ See *B.K.*, Docket No. 18-0386 (issued September 14, 2018).

and February 27, 2016 to February 10, 2017 causally related to his accepted July 22, 2013 employment injury.

The record indicates that prior to his federal employment, appellant sustained a significant injury to his right arm when his hand was crushed in a printing press which caused amputation of his middle, ring, and little fingers and partial amputation of his index finger. The employing establishment reported that appellant had been released to full duty on September 3, 2014, and this was acknowledged by him at the April 12, 2018 hearing. Appellant stopped work on December 12, 2014, and in reports dated December 15, 2014, Dr. Lincoski, an attending orthopedic surgeon, described examination findings, diagnosed asymptomatic right fascial hernia, resolved biceps tendinitis, and symptomatic right lateral epicondylitis. He provided restrictions that appellant could perform no heavy lifting, pushing, or pulling greater than five pounds and no grasping for more than three hours.¹⁶ Dr. Lincoski, however, did not indicate whether the restrictions were due to appellant's accepted sprains of the right elbow and forearm and right forearm fascial herniation or due to his prior serious right upper extremity injury. He provided no additional medical evidence until a January 23, 2017 duty status report in which he diagnosed right elbow tendinitis and fascial herniation and provided permanent restrictions of three to four hours of simple grasping per day and a five-pound weight restriction.

The Board finds Dr. Lincoski's reports are insufficient to establish that appellant was totally disabled due to the conditions caused by the July 22, 2013 lifting injury at work. Dr. Lincoski did not explain in any of his reports whether appellant's restrictions and/or disability were due to the very serious nonemployment-related previous injury that caused amputation of three fingers and partial amputation of the fourth or by the July 22, 2013 employment injury. He did not express specific knowledge of appellant's job duties or explain why he could not perform the specific duties due to the employment injury. Thus, Dr. Lincoski's reports are insufficient to meet appellant's burden of proof to establish total disability for any of the periods claimed.¹⁷

OWCP referred appellant to Dr. Langa who provided a January 14, 2016 report in which she described both right upper extremity injuries and noted that, following his release to regular job duties in September 2014, appellant reported that he immediately began having problems with his grip. Dr. Langa explained that appellant did not have a true grip due to the absence of three of his fingers of his right extremity and merely had pinch between his thumb and remaining portion of his index finger. She opined that he had reached maximum medical improvement with regard to his right forearm which was medically stable. Dr. Langa did not comment on his work capabilities. OWCP again referred appellant to Dr. Langa, and in a December 13, 2017 report, she advised that appellant's fascial defect was permanent, but was not disabling, and that the accepted July 22, 2013 employment injury did not aggravate appellant's preexisting injury to his right hand. Dr. Langa opined that appellant should be able to perform full work duties as a rural carrier.

¹⁶ Of interest, in a February 17, 2014 treatment note, prior to the period of claimed disability, Dr. Lincoski opined that appellant mostly had overuse given that he had limited function in his ability to use his right hand due to a prior injury. At that time he recommended four hours of restricted duty daily, indicating that these restrictions were permanent, and that appellant's symptoms were overuse from his prior injury.

¹⁷ See *E.M.*, Docket No. 18-0275 (issued June 8, 2018)

The issue of disability from work can only be resolved by competent medical evidence.¹⁸ In the absence of sufficient medical evidence, the Board finds that the medical evidence of record is insufficient to establish that appellant was totally disabled for the claimed period. Dr. Lincoski did not explain with sufficient rationale why appellant could not perform his job duties due to the accepted conditions.¹⁹

Furthermore, contrary to counsel's assertion on appeal that appellant was entitled to compensation because there was no work available within his restrictions, by appellant's own testimony at the April 12, 2018 hearing, he was working full duty through December 18, 2014. The medical evidence of record does not establish that appellant required work restrictions due to his accepted conditions during the time periods involved.²⁰

The Board finds that appellant did not submit sufficient rationalized medical opinion evidence to establish that he was disabled from work for the successive periods commencing December 19, 2014 due to accepted conditions and was thus entitled to wage-loss compensation for the periods claimed.²¹

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish total disability for the periods December 19, 2014 to February 21, 2015, August 23, 2015 to January 13, 2016, and February 27, 2016 to February 10, 2017 causally related to his accepted July 22, 2013 employment injury.

¹⁸ *R.C.*, 59 ECAB 546 (2008).

¹⁹ *See A.D.*, Docket No. 18-0255 (issued July 2, 2018).

²⁰ When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements. *M.S.*, Docket No. 18-0877 (issued November 21, 2018); *Terry R. Hedman*, 38 ECAB 222 (1986).

²¹ *N.R.*, Docket No. 14-0114 (issued April 28, 2014).

ORDER

IT IS HEREBY ORDERED THAT the May 22, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 14, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board